Paper No. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte LOUIS DISCHLER

Appeal No. 2002-0271
Application No. 09/467,406

ON BRIEF

Before COHEN, FRANKFORT, and STAAB, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 7, 9 through 11, 25 and 28 through 30. While appellant's Notice of Appeal (Paper No. 10) also included claims 21 through 24 as being subject to appeal, we observe that appellant's brief (Paper No. 13) does not list those claims as "appealed" and that such claims have not been included in appellant's "GROUPING OF REJECTED CLAIMS" (Brief, page 3) or a copy thereof supplied in the Appendix of claims on appeal attached to the brief. Accordingly, we consider that appellant

has withdrawn the appeal as to claims 21 through 24 and conclude that the examiner's rejection of such claims is not before us for review. Thus, the appeal as to claims 21 through 24 is dismissed. Claims 8, 12 through 14, 26 and 27, the only other claims remaining in the application, stand objected to, but have been indicated by the examiner to be allowable if rewritten in independent form. Claims 15 through 20 have been canceled.

As noted on page 1 of the specification, appellant's invention relates to safety razors of the type that have a plurality of adjacently mounted blades permanently mounted in a razor head. As can be seen from Figure 9 of the application, the invention more particularly relates to a razor having a plurality of short blades (98) mounted in the razor head at a high slicing angle of greater than 30 degrees and less than about 85 degrees, and oriented at a shaving angle in the range between 2 degrees and 90 degrees. Independent claims 1, 11 and 25 are representative of the subject matter on appeal and a copy of those claims can be found in the Appendix to appellant's brief (Paper No. 13).

The sole prior art reference of record relied upon by the examiner is:

Hadjopoulos	2,043,998	Jun. 16, 1936

Claims 1 through 7, 9 through 11, 25 and 28 through 30 stand rejected under 35 U.S.C. § 103 as being unpatentable over Hadjopoulos.

Rather than reiterate the conflicting viewpoints advanced by the examiner and appellant regarding the above-noted rejection, we refer to the examiner's answer (Paper No. 14, mailed July 18, 2001) and to appellant's brief (Paper No. 13, filed May 4, 2001) and reply brief (Paper No. 15, filed July 27, 2001) for a full exposition thereof.

OPINION

Having carefully reviewed the obviousness issues raised in this appeal in light of the record before us, we have come to the conclusion that the examiner's rejection of the appealed claims under 35 U.S.C. § 103 will not be sustained. Our reasoning in support of this determination follows.

In the first Office action (Paper No. 4, mailed December 11, 2000, paragraph 5), the examiner rejected claims 1 through 7, 9 through 11 and 20 through 24 under 35 U.S.C. § 103(a) based on Hadjopoulos with the mere statement that "[t]he various lengths, and angles claimed would appear to be obvious absent a showing of criticality." In the final rejection (Paper No. 7, mailed March 13, 2001), the examiner repeated the rejection based on Hadjopoulos, adding newly submitted claims 25 and 28 through 30 to the rejection, and indicating that "[t]he rational [sic] from paragraph 5 of the last Office action is incorporated herein by reference." In the examiner's answer (Paper No. 14, page 3), the examiner has engaged in a somewhat different approach. More particularly, the examiner now urges that:

> Hadjopoulos shows a safety razor with leading and trailing guard means and a plurality of intermediate cutting edges. Each of the edges has a leading and trailing edge and a slicing angle and a cutting angle. It is noted that the average razor has a blade with a length that is in the area of 35-45 mm. Thus the length of the individual cutting edges of Hadjopoulos would appear to be less than 8 mm in length. If not however it would have been obvious to so stipulate since changing their length by a small amount would appear to have little bearing on the use of the razor. Further it would appear likely that the shaving angle of the blades would be slightly above zero as shown in Figs. 1, 7 and would thus be either in or very close to the claimed 2 deg.-90 deg. Range. If less than 2 deg. then it would appear to be obvious to one of ordinary skill in the art that the angle would be increased to

> at least 2 deg. since this is a relative common angle for wet shavers. Regarding the slicing angle, the angle of the Hadjopoulos edges are shown to be in the range claimed by appellant (answer, page 3).

After a careful evaluation of the safety razor and blade disclosed in the patent to Hadjopoulos, it is our opinion that the examiner's reasoning in the rejection before us on appeal is fraught with speculation and conjecture. Thus, like appellant, we find that the examiner has failed to meet his burden of establishing a *prima facie* case of obviousness.

In particular, we share appellant's view as aptly expressed in the brief and reply brief regarding the examiner's position that "it would appear likely that the shaving angle of the blades [in Hadjopoulos] would be slightly above zero as shown in Figs. 1, 7 and would thus be either in or very close to the claimed 2 deg.-90 deg. Range" and that "[i]f less than 2 deg. then it would appear to be obvious to one of ordinary skill in the art that the angle would be increased to at least 2 deg. since this is a relative [sic] common angle for wet shavers." Particularly persuasive were the arguments presented by appellant in the reply brief (Paper No. 15, filed July 27, 2001), to which the examiner chose not to respond. Since neither the applied reference nor

the examiner provides an adequate factual basis to establish that the natural result flowing from following the teachings of Hadjopoulos would be a safety razor head constructed and configured in the manner specifically defined in appellant's independent claims 1, 11 and 25 on appeal, it follows that we will not sustain the examiner's rejection of those claims under 35 U.S.C. § 103.

In addition, we note that the examiner's rejection of claims 2 through 7, 9, 10 and 28 through 30, which depend from the above-noted independent claims, under 35 U.S.C. § 103 based on Hadjopoulos, will likewise not be sustained.

The decision of the examiner to reject claims 1 through 7, 9 through 11, 25 and 28 through 30 under 35 U.S.C. § 103 is reversed.

REVERSED

IRWIN CHARLES COHEN Administrative Patent Judge	)	
CHARLES E. FRANKFORT Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
LAWRENCE J. STAAB Administrative Patent Judge	)	

CEF/lbg

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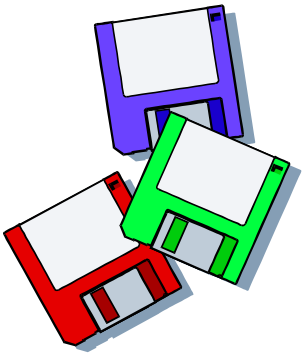

Lesley

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APJ FRANKFORT

APJ COHEN

APJ STAAB

DECISION: REVERSED

Prepared: June 20, 2003

Draft Final

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PALM / ACTS 2 / BOOK

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